

R.D. # 0017-99
Tinton Falls, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

AVENUES IN LEATHER, INC.¹

Employer

and

CASE 22-RC-11792

**LOCAL 300S, PRODUCTION SERVICE
AND SALES DISTRICT COUNCIL, UNITED
FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

3. The labor organization involved claims to represent certain employees of the Employer.⁵
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

All full-time and regular part-time warehouse employees, including shipping and receiving employees employed by the Employer at its Tinton Falls, New Jersey facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.⁶

The Employer declined to stipulate that the Petitioner is a labor organization under the Act. With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). In this

³ No briefs were filed.

⁴ The Employer, a New Jersey corporation, is engaged in the warehousing, sale and distribution of leather goods and related products at its Tinton Falls, New Jersey facility, its only facility involved herein.

⁵ The status of the Petitioner as a labor organization within the meaning of the Act will be discussed *infra*.

⁶ The parties stipulated and, I find, that Michael Jacob, the Employer's Warehouse Supervisor, Craig Tiernan, Import Manager and Paul Gengler, Controller, are supervisors within the meaning of the Act and, therefore, are excluded from the unit. There are approximately 12 employees employed in the unit.

regard, the record reveals that employees have participated in the Petitioner by attending meetings, discussing the status of collective bargaining negotiations and pending grievances. Further, the record discloses that the Petitioner has dealt with various employers concerning wages, rates of pay, hours and working conditions and has entered into collective bargaining agreements with various employers. In these circumstances, I find the Petitioner to be a labor organizations under Section 2(5) of the Act. *Ana Colon, Inc.* 266 NLRB 611, 612 (1983); *Alto Plastics Manufacturing Corp.*, supra.

The Petitioner seeks to represent a unit of all full-time and regular part-time warehouse employees, including shipping and receiving employees employed at the Employer's Tinton Falls facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act. There are approximately 12 employees in the petitioned for unit. In dispute is the unit placement of three clerical employees, whom the Employer, contrary to the Petitioner, would include in the unit, asserting that these employees share a sufficient community of interest with the unit employees to warrant their inclusion in the unit.

The Board customarily excludes office clerical employees from units of production and maintenance employees, while plant clericals are generally included in such units. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127 (1971); *Westinghouse Electric Corp.*, 118 NLRB 1043 (1957); *Raytec Co.*, 228 NLRB 646 (1977). The distinction between office clericals and plant clericals, however, is not always a clear one because the disputed employees often appear to share characteristics of both groups in the duties they perform and in their working conditions. A controlling factor in making this distinction is whether the disputed clericals perform work that is directly related to, and integrated with, the functional operation of the facility and the duties performed by other

unit employees. *Ives Business Forms, Inc.*, 263 NLRB 286, 289 (1982). In making this determination the Board looks at factors such as whether the clericals have regular contact with unit employees; work in an area adjacent to unit employees; and share common wages, immediate supervision, working conditions, and fringe benefits with unit employees. *American Parts System, Inc.*, 254 NLRB 901, 902 (1981). If such factors are present, the clericals are considered to be plant clericals. *Jacob Ash Co.*, 224 NLRB 74, 75 (1976). If, however, the disputed employees have separate and distinct functions from unit employees; are separately supervised; physically separated; have minimal contact with unit employees; and limited transfer or interchange with unit employees, the clericals are found to be office clericals and excluded from the unit. *Ives Business Forms, Inc.*, *supra*.

The record reveals that the Employer operates out of an approximately 87,000 sq. ft. single floor facility in Tinton Falls, New Jersey. At the front of the building is an office area where the Employer's executives, accounting department and the three clericals at issue here work.⁷ Separated from this office area is the warehouse area of the facility. In the warehouse, warehouse employees and shipping and receiving employees remove and count boxes taken from trucks, move the boxes into the warehouse for storage, and pick, pack, ship and load orders onto trucks for shipment to customers.

The three clericals here are Jenny DiGregorio, employed primarily as a receptionist, Rocio Friere, an accounts receivable clerk and Glenn Hock, engaged in sending samples to customers and customer representatives. DiGregorio, the receptionist, works in the reception area adjacent to a door that leads into the office area. She is responsible for greeting and announcing visitors to the facility and answering and

routing telephone calls. The Employer acknowledges that she has no occasion to enter the warehouse area and it appears that as a result she has no work related contact with other unit employees. DiGregorio is supervised by Paul Gengler, Controller, who does not supervise unit employees. Friere, accounts receivable clerk, works primarily at a desk in the accounting department which is located in the office area. Her work station is adjacent to Gengler's office, who is her immediate supervisor. She is engaged in the processing of accounting department paperwork involved in the return of products. The record discloses that Friere, perhaps two times per week, has occasion to enter the warehouse area to speak to a warehouseman regarding a paperwork discrepancy regarding customer returns. These appear to be very brief conversations. Hock is responsible for shipping sample products to customers and customer representatives. His work station is in an office adjacent to the office area. The record reveals that Hock does not interact with other unit employees but rather deals exclusively with Warehouse Supervisor Michael Jacob when he requires product to send to customers. In this connection, he advises Jacob of what he requires and Jacob, in turn, utilizes unit employees to retrieve the requested products. Hock only enters the warehouse area to interact with Jacob as needed. He is supervised by Import Manager, Craig Tiernan, who does not supervise other unit employees. There is no evidence that these three clericals have any regular work related contact with the warehouse employees nor do they have much occasion to be in the warehouse areas of the facility in connection with work related issues. The record reveals that the three clericals here use computers, copy machines, fax machines and telephones in the course of their work.

⁷ One of the three, Glenn Hock, works in an office adjacent to the main office area which is not part of the warehouse space.

The three clerical employees, like other unit employees, are hourly paid earning in the range of \$10 to \$13 per hour whereas other unit employees earn rates in the range of \$7 to \$12 per hour.⁸ Other terms and conditions of employment, such as personal days, sick days, paid holidays, bereavement policy, disciplinary procedures, vacations and bonuses, are similar for all employees. Although all hourly employees punch a time clock, the three clericals have their own time clock located in the office area. All employees are invited to the Employer's annual Christmas party and summer picnic. All employees are paid bi-weekly and use the same parking lot. There is one lunch room available for all employees. All employees are eligible to participate in the Employer's flex hour system which ranges from 7:00 am to 6:00 pm. There is no evidence of interchange with other unit employees or the interchange of job functions. The Employer asserts that in February 1999, an unnamed warehouse employee transferred to the accounting department. However, there is no evidence that clerical employees were transferred to warehouse positions or that the reverse occurred.

As noted above, the Board customarily excludes office clerical employees from units of production and maintenance employees. *Hygeia Coca-Cola Bottling Co.*, supra; *Westinghouse Electric Corp.*, supra; *Raytec Co.*, supra. Here, the evidence reveals that the employees discussed above do not share common immediate supervision with warehouse employees. Their duties encompass largely clerical and accounting functions, involving paperwork and customer contact. In light of these duties and functions, the lack of work related contact with warehouse employees, separate work location, a higher

⁸ One unnamed clerical employee, apparently not at issue in this matter, is salaried and is responsible for the input of data. The record does not describe any other circumstances of this employee's functions or terms and conditions of employment. As noted, the Employer does not assert that this individual should be included in the unit found appropriate herein.

range of pay and no interchange with other unit employees, I find that these employees are office clerical employees not sharing a community of interest with other unit employees. As to Hock's functions related to sample orders, the Board has held that these are typical office clerical functions, particularly where, as here, they are performed in a separate office location, under separate supervision and with little or no contact with warehouse employees. See *Mitchellace, Inc.*, 314 NLRB 536 (1994); *Dunham's Athleisure Corp.*, 311 NLRB 175 (1993). Accordingly, the three employees here are properly excluded from the petitioned for unit. *Cook, Composites & Polymers Co.*, 313 NLRB 1105 (1994).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and

who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 300S, Production Service and Sales District Council, United Food and Commercial Workers International Union, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before September 7, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by September 13, 1999.

Signed at Newark, New Jersey this 30th day of August 1999.

/s/ Gary T. Kendellen
Gary T. Kendellen, Regional Director
NLRB Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102

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